

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-6502

EDWARD L. MOSES,

Plaintiff - Appellant,

versus

DAVID R. FISHER; COUNTY OF STANLY,

Defendants - Appellees.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, District Judge. (CA-98-686-1)

Submitted: July 13, 2000

Decided: July 24, 2000

Before WIDENER, LUTTIG, and TRAXLER, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Edward L. Moses, Appellant Pro Se. Charles Jerome Murray, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, Raleigh, North Carolina; Tyrus Vance Dahl, Jr., WOMBLE, CARLYLE, SANDRIDGE & RICE, Winston-Salem, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Edward L. Moses appeals the district court's judgment adopting the magistrate judge's report and recommendation and granting the Appellees' motion to dismiss. Moses has abandoned appellate review of his claim against the County of Stanly because he did not raise the issue in his informal brief. See 4th Cir. R. 34(b). Thus, we affirm as to that claim.

The district court dismissed without prejudice Moses' claim against David Fisher. "[A] plaintiff may not appeal the dismissal of his complaint without prejudice unless the grounds for dismissal clearly indicate that no amendment [in the complaint] could cure the defects in the plaintiff's case." Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1067 (4th Cir. 1993) (internal quotation marks omitted). In ascertaining whether a dismissal without prejudice is reviewable in this Court, we must determine whether Moses "could save his action by merely amending his complaint." Id. at 1066-67. Because the grounds for dismissal of this claim show that Moses could save the action by filing an amended complaint in the district court, that part of the order dismissing the claim against Fisher is not appealable. Thus, we dismiss for lack of jurisdiction the appeal from the judgment dismissing without prejudice Moses' claim against Fisher.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART, DISMISSED IN PART